
SENATE BILL 6278

State of Washington

60th Legislature

2008 Regular Session

By Senator Haugen

Read first time 01/14/08. Referred to Committee on Transportation.

1 AN ACT Relating to clarification of pilot rule making; and amending
2 RCW 34.05.310, 34.05.313, 34.05.315, and 34.05.335.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 34.05.310 and 2004 c 31 s 1 are each amended to read
5 as follows:

6 (1) To meet the intent of providing greater public access to
7 administrative rule making and to promote consensus among interested
8 parties, agencies shall solicit comments from the public on a subject
9 of possible rule making before filing with the code reviser a notice of
10 proposed rule making under RCW 34.05.320. The agency shall prepare a
11 statement of inquiry that:

12 (a) Identifies the specific statute or statutes authorizing the
13 agency to adopt rules on this subject;

14 (b) Discusses why rules on this subject may be needed and what they
15 might accomplish;

16 (c) Identifies other federal and state agencies that regulate this
17 subject, and describes the process whereby the agency would coordinate
18 the contemplated rule with these agencies;

1 (d) Discusses the process by which the rule might be developed,
2 including, but not limited to, negotiated rule making, pilot rule
3 making, or agency study;

4 (e) Specifies the process by which interested parties can
5 effectively participate in the decision to adopt a new rule and
6 formulation of a proposed rule before its publication.

7 The statement of inquiry for all except pilot projects shall be
8 filed with the code reviser for publication in the state register at
9 least thirty days before the date the agency files notice of proposed
10 rule making under RCW 34.05.320 and the statement, or a summary of the
11 information contained in that statement, shall be sent to any party
12 that has requested receipt of the agency's statements of inquiry.

13 For pilot projects, the statement of inquiry shall be filed with
14 the code reviser for publication in the Washington State Register at
15 the time of or up to twenty days before the first public notice
16 required by RCW 34.05.313(1).

17 (2) Agencies are encouraged to develop and use new procedures for
18 reaching agreement among interested parties before publication of
19 notice and the adoption hearing on a proposed rule. Examples of new
20 procedures include, but are not limited to:

21 (a) Negotiated rule making by which representatives of an agency
22 and of the interests that are affected by a subject of rule making,
23 including, where appropriate, county and city representatives, seek to
24 reach consensus on the terms of the proposed rule and on the process by
25 which it is negotiated; and

26 (b) Pilot rule making which includes testing the feasibility of
27 complying with or administering draft new rules or draft amendments to
28 existing rules through the use of volunteer pilot groups in various
29 areas and circumstances, as provided in RCW 34.05.313 or as otherwise
30 provided by the agency.

31 (3)(a) An agency must make a determination whether negotiated rule
32 making, pilot rule making, or another process for generating
33 participation from interested parties prior to development of the rule
34 is appropriate.

35 (b) An agency must include a written justification in the rule-
36 making file if an opportunity for interested parties to participate in
37 the rule-making process prior to publication of the proposed rule has
38 not been provided.

1 (4) This section does not apply to:

2 (a) Emergency rules adopted under RCW 34.05.350;

3 (b) Rules relating only to internal governmental operations that
4 are not subject to violation by a nongovernment party;

5 (c) Rules adopting or incorporating by reference without material
6 change federal statutes or regulations, Washington state statutes,
7 rules of other Washington state agencies, shoreline master programs
8 other than those programs governing shorelines of statewide
9 significance, or, as referenced by Washington state law, national
10 consensus codes that generally establish industry standards, if the
11 material adopted or incorporated regulates the same subject matter and
12 conduct as the adopting or incorporating rule;

13 (d) Rules that only correct typographical errors, make address or
14 name changes, or clarify language of a rule without changing its
15 effect;

16 (e) Rules the content of which is explicitly and specifically
17 dictated by statute;

18 (f) Rules that set or adjust fees or rates pursuant to legislative
19 standards; or

20 (g) Rules that adopt, amend, or repeal:

21 (i) A procedure, practice, or requirement relating to agency
22 hearings; or

23 (ii) A filing or related process requirement for applying to an
24 agency for a license or permit.

25 **Sec. 2.** RCW 34.05.313 and 1995 c 403 s 303 are each amended to
26 read as follows:

27 (1) During the development of a rule or after its adoption, an
28 agency may develop methods for measuring or testing the feasibility of
29 complying with or administering the rule and for identifying simple,
30 efficient, and economical alternatives for achieving the goal of the
31 rule. A pilot project shall include public notice, participation by
32 volunteers who are or will be subject to the rule, a high level of
33 involvement from agency management, stated and reasonable completion
34 dates, and a process by which one or more parties may withdraw from the
35 process or the process may be terminated. Volunteers who agree to test
36 a rule and attempt to meet the requirements of the draft rule, to
37 report periodically to the proposing agency on the extent of their

1 ability to meet the requirements of the draft rule, and to make
2 recommendations for improving the draft rule shall not be obligated to
3 comply fully with the rule being tested nor be subject to any
4 enforcement action or other sanction for failing to comply with the
5 requirements of the draft rule.

6 (2) An agency conducting a pilot rule project authorized under
7 subsection (1) of this section may waive one or more provisions of
8 agency rules otherwise applicable to participants in such a pilot
9 project if the agency first determines that such a waiver is in the
10 public interest and necessary to conduct the project. Such a waiver
11 may be only for a stated period of time, not to exceed the duration of
12 the project, as required to be stated in subsection (1) of this
13 section.

14 (3) No qualification or requirement relating to the enjoyment of
15 benefits or privileges conferred by law is established, altered, or
16 revoked for any participant in a pilot project.

17 (4) The findings of the pilot project should be widely shared and,
18 where appropriate, adopted as amendments to the rule.

19 ((+4)) (5) If an agency conducts a pilot rule project in lieu of
20 meeting the requirements of the regulatory fairness act, chapter 19.85
21 RCW, the agency shall ensure the following conditions are met:

22 (a) If over ten small businesses are affected, there shall be at
23 least ten small businesses in the test group and at least one-half of
24 the volunteers participating in the pilot test group shall be small
25 businesses.

26 (b)(i) If there are at least one hundred businesses affected, the
27 participation by small businesses in the test group shall be as
28 follows:

29 (A) Not less than twenty percent of the small businesses must
30 employ twenty-six to fifty employees;

31 (B) Not less than twenty percent of the small businesses must
32 employ eleven to twenty-six employees; and

33 (C) Not less than twenty percent of the small businesses must
34 employ zero to ten employees.

35 (ii) If there do not exist a sufficient number of small businesses
36 in each size category set forth in (b)(i) of this subsection willing to
37 participate in the pilot project to meet the minimum requirements of

1 that subsection, then the agency must comply with this section to the
2 maximum extent practicable.

3 (c) The agency may not terminate the pilot project before
4 completion.

5 (d) Before filing the notice of proposed rule making pursuant to
6 RCW 34.05.320, the agency must prepare a report of the pilot rule
7 project that includes:

8 (i) A description of the difficulties small businesses had in
9 complying with the pilot rule;

10 (ii) A list of the recommended revisions to the rule to make
11 compliance with the rule easier or to reduce the cost of compliance
12 with the rule by the small businesses participating in the pilot rule
13 project;

14 (iii) A written statement explaining the options it considered to
15 resolve each of the difficulties described and a statement explaining
16 its reasons for not including a recommendation by the pilot test group
17 to revise the rule; and

18 (iv) If the agency was unable to meet the requirements set forth in
19 (b)(i) of this subsection, a written explanation of why it was unable
20 to do so and the steps the agency took to include small businesses in
21 the pilot project.

22 **Sec. 3.** RCW 34.05.315 and 1989 c 175 s 6 are each amended to read
23 as follows:

24 (1) Each agency shall maintain a current public rule-making docket.
25 The rule-making docket shall contain the information specified in
26 subsections (3) and (4) of this section.

27 (2) The rule-making docket shall contain a listing of each pending
28 rule-making proceeding. A rule-making proceeding for a proposed rule
29 is pending from the time it is commenced by publication of a notice of
30 proposed rule adoption under RCW 34.05.320 until the proposed rule is
31 withdrawn under RCW 34.05.335 or is adopted by the agency. A rule-
32 making proceeding for a pilot project is pending from the time it is
33 commenced by publication of the statement of inquiry under RCW
34 34.05.310 until the pilot project is withdrawn under RCW 34.05.335 or
35 is proposed as a rule by the agency.

36 (3) For each rule-making proceeding, the docket shall indicate all
37 of the following:

1 (a) The name and address of agency personnel responsible for the
2 proposed rule;

3 (b) The subject of the proposed rule;

4 (c) A citation to all notices relating to the proceeding that have
5 been published in the state register under RCW 34.05.320;

6 (d) The place where written submissions about the proposed rule may
7 be inspected;

8 (e) The time during which written submissions will be accepted; and

9 (f) The current timetable established for the agency proceeding,
10 including the time and place of any rule-making hearing, the date of
11 the rule's adoption, filing, publication, and its effective date.

12 (4) For each pilot project, the docket shall indicate all of the
13 following:

14 (a) The name and address of agency personnel responsible for the
15 pilot project;

16 (b) The subject of the pilot project;

17 (c) A citation to all notices relating to the proceeding that have
18 been published under RCW 34.05.313;

19 (d) The place where written submissions about the pilot project may
20 be inspected;

21 (e) The time during which written submissions will be accepted; and

22 (f) The current timetable established for the agency proceeding,
23 including the time and place of any hearing on the pilot project, and
24 the date of the pilot project's completion.

25 **Sec. 4.** RCW 34.05.335 and 1989 c 175 s 8 are each amended to read
26 as follows:

27 (1)(a) A proposed rule may be withdrawn by the proposing agency at
28 any time before adoption. A withdrawn rule may not be adopted unless
29 it is again proposed in accordance with RCW 34.05.320.

30 (b) A pilot project may be withdrawn by the proposing agency at any
31 time before it is proposed as a rule for adoption under RCW 34.05.320.
32 A withdrawn pilot project may not be continued unless it is again
33 proposed in accordance with RCW 34.05.310 and 34.05.313.

34 (2) Before adopting a rule, an agency shall consider the written
35 and oral submissions, or any memorandum summarizing oral submissions.

36 (3) Pilot projects not proposed as rules and rules not adopted and
37 filed with the code reviser within one hundred eighty days after

1 publication of the text as last proposed in the register shall be
2 regarded as withdrawn. An agency may not thereafter continue the pilot
3 project or adopt the proposed rule without refiling ((~~it~~)) the pilot
4 project in accordance with RCW 34.05.310 or refiling the rule in
5 accordance with RCW 34.05.320. The code reviser shall give notice of
6 the withdrawal in the register.

7 (4) An agency may not adopt a rule before the time established in
8 the published notice, or such later time established on the record or
9 by publication in the state register.

--- END ---